IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2420 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADRESA-E-HAJI JAMAT BA-UMMA TRUSTEE HAJI AHMED H IBRAHIM N
Versus
KHIMZAR A SATTAR NAVIWALA

Appearance:
1. Special Civil Application No. 2420 of 1992
MR PV HATHI for Petitioner No. 1-3
MR SV RAJU for Respondent No. 1-4
MR PREMAL R JOSHI for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/08/2004

ORAL JUDGEMENT

1.0 The petitioner Trust has challenged the judgment

and order dated 02/07/91 in Application No.218/1988 passed by the Gujarat Primary Education Tribunal, Ahmedabad, whereby respondents no.1 to 4 - Teachers were declared to be in service with all benefits and the petitioner was directed to pay full salary with all the allowances as per the Government Resolution.

2.0 The petitioner Trust was running a Primary School at Dhoraji. The said Trust was managed by its sole Managing Trustee - Haji Ahmed Ibrahim Noorani. Respondents no.1 to 4 were Teachers in the said school managed by the Trust. As the Institution was running in loss, the Teachers of the said school filed an application being Application No.218/1988 before the Gujarat Primary Education Tribunal praying that the said Trust should not be closed, as it would result in the termination of their services.

2.1 The Tribunal by order dated 02/07/91 partly allowed the application by setting aside the orders of termination passed against respondents no.1 to 4. Hence, this petition.

3.0 Mr.Mehta appearing for Mr.P V Hathi for the petitioner Trust has submitted that the said school was closed since 1988 and that the financial condition of the Trust was very weak. He has further submitted that being a Minority Institution, the Trust was not required to conduct any departmental inquiry as envisaged under the provisions of the Bombay Primary Education Act, 1947. Therefore, the order passed by the Tribunal declaring the respondent Teachers to be in service and that they were entitled for salaries is illegal and deserves to be quashed and set aside.

4.0 I have heard Mr.Mehta learned advocate for the petitioner. Assuming that the petitioner Trust was a Minority Institution, then also a reasonable opportunity of show cause / explanation was required to be given to the respondent Teachers. The Tribunal has rightly recorded the finding that a reasonable opportunity ought to have been given to the respondent Teachers before terminating their services. The petitioner Trust has without waiting for the reply from the respondent Teachers has terminated their services.

4.1 I am in complete agreement with the reasonings given by the Tribunal. Now, assuming that even if the petitioner Trust was a Minority Institution, then the way in which the respondent Teachers' services were terminated, is not found to be just and proper.

Therefore, the order passed by the Tribunal is justified and it requires no interference under Article 227 of the Constitution of India.

5.0 In the result, the petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

(K. S. Jhaveri, J.)

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